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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
GARG, YOGESH C	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/813,023	SEKI ET AL.	
	Examiner	Art Unit	
	Yogesh C Garg	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-7 and 11-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-7 and 11-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The applicant's amendment received on August 09, 2004 is acknowledged and entered. Claims 2-4 and 8-10 have been cancelled and claims 1, 5-7 and 12 have been amended. New claim 13 has been added. Currently claims 1, 5-7 and 11-13 are pending for examination.

Response to Arguments

2.1. Applicant's arguments (see Remarks, pages 5-7) with respect to rejection of claims 1-12 under 35 U.S.C. 102 (e) and 35 U.S.C. 103 (a) have been considered but are moot in view of the new ground(s) of rejection necessitated due to amendments.

2.2. Applicant's arguments (see Remarks, pages 6-7) filed with respect to rejection of claims 2, 6, and 8 under 35 U.S.C. 103 (a) as being obvious over '628 patent further in view of Official Notice have been fully considered but they are not persuasive for following reasons:

The examiner took Official Notice in the previous non-final Office action for the teaching of " making a try-on reservation at a store", see pages 6-7. The examiner provided a rationale as why " making a try-on reservation at a store" is a practice which is generally well-known, quote,

> " *The customer goes to an eyeglasses store for trying on various frames/lenses of different types and colors to select an eyeglass to place an order). Saigo does not disclose making a try-on reservation at the said store. However, the examiner takes an Official Notice of the notoriously well-known concept and benefits of making a reservation for try-on process before going to the store. It is a well-known fact for many years that a buyer/customer first makes a reservation before visiting an optometrist/eyeglasses store or a doctor for eye-examination and to buy eyeglasses so that his/hers eye examination and customer support is presented to him for trying and selecting eyeglasses at the*

appointed time for the obvious reason that neither the customer's nor the stores' time is wasted and none of them goes through the inconvenience of having to wait for his/her turn. ".

Unquote.

The examiner clearly pointed out that as a practice people do make reservations for appointments so that the user gets the service at the scheduled time and so that neither the user's nor the store's [or the party who provides the service to the buyer] time is wasted and that nobody has to go through the inconvenience of waiting. Late appointments or unfulfilled appointments translate into loss of revenues. Therefore, the practice of making reservations before going for an appointment is well-known, or to be common knowledge in the art and is capable of instant and unquestionable demonstration. Some examples are; appointment with a doctor, lawyer, business appointments, etc. However, the Applicant has neither pointed out any errors nor provided any evidence contrary to the facts and benefits taken as Official Notice. The applicant has made a conclusive statement that the Examiner's official Notice is provided without a basis from a reference. Therefore, applicant's traversal of the Official Notice is moot without offering an adequate traversal of the Examiner's Official notice and the applicant's response to non-Final Office action received on August 9, 2004 is taken to be admitted prior art, see MPEP 2144.03 [R-1] C.

Also see, *In re Berg , Nos: 02-1120, -1160.* On February 20, 2003, the Federal Circuit affirmed the decisions of the Board of Patent Appeals and Interferences upholding the rejections of the claims of U.S. patent application Serial No. 08/278,774, and a related divisional application, No. 08/630,654, as obvious under 35 U.S.C. §

103(a). The subject matter of the applications related to mutated recombinant collagens. The Federal Circuit stated:

> *" As persons of scientific competence in the fields in which they work, examiners and administrative patent judges on the Board are responsible for making findings, informed by their scientific knowledge, as to the meaning of prior art references to persons of ordinary skill in the art and the motivation those references would provide to such persons.* ***Absent legal error or contrary factual evidence, those findings can establish a prima facie case of obviousness. [T]he appellants have not pointed to any legal error affecting the Board's obviousness analysis. Nor have they pointed to sufficient factual grounds, either in the record or in any judicially noticeable sources, to question the findings made by the examiner and the Board as to the teachings of the prior art and the motivation that the prior art references would give to a skilled artisan to make the claimed invention. [We] sustain the Board's conclusion that the recited prior art references established a prima facie case of obviousness with respect to the appealed claims of the '774 and '654 applications*** *".*

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3.1. Claims 1, 5, 7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US Patent 5,930,769) in view of Liebermann (US Patent 6,415,199).

Note: Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Regarding claim 1, Rose teaches a sales transaction support method for supporting a sale of a commodity (see col.2, line 63-col.3, line 17. Note: In Rose, the commodity is fashion related.), comprising:

presenting said commodity, providing a try-on simulation image of an object virtually wearing said commodity by using commodity image information of an image of said commodity presented and object image information of an image of said object, and executing a transaction process for said commodity (see at least col.6, line 43-col.7, line 27, " ..... *The system may also provide an adaptive presentation of choices based on a determined prioritization. Each database entry or fashion has corresponding fashion data. Fashion data allows presentation of a projection of a model having the customer's body type wearing the selected fashion,*

portrayed on the computer screen. ..... ". Note: The projection of a model having the customer's body corresponds to the claimed object image, which virtually wears the selected fashion commodity).

Rose discloses registering customer information including at least one of data related to height, weight, body type and favorite fashion, and said object image information is generated based on said customer information and said commodity is presented based on said customer information registered.

(see at least col.3, line 18-col.4, line 30,

".....The personal information which is entered into the computer system includes body measurements along with credit information, address, and other pertinent facts. The personal information is a permanent record in the database of the electronic fashion shopping system and redundant input is not needed the next time the customer accesses the system. ..... ***Turning to the figures, FIG. 1 shows a body frame illustrating the body measurements that must be inputted into the electronic fashion system before accessing the system. The body measurements include center front 2, arm length 4, bust 6, waist 8, hip 10, and height 12.*** *.....The customer may also submit a photograph of her face taken with a digital camera or alternatively submit a photograph that is digitized by the electronic fashion shopping service. It is preferable that multiple photographs of the face depicting the front view, side view, back view, etc. are submitted so that the system can accurately depict the face at different angles.* ***.....After the personal information is entered, the system determines a body type based on the body measurements. As determined by the system, body type is an individual's skeleton or bone frame plus an amount of flesh surrounding a specific anatomical part.*** *..... Fashion is cloth or fabric constructed to a specific shape and size which determines style. The amount of cloth and shape when cut, is placed on a specific skeletal frame and flesh area, which determines the fashion or look which is the result of the process. Not all shapes fit all frames, so not all styles fit all body types. While certain limitations are physical, e.g. a body too large for the clothing-line, some limitations are aesthetic, and must be determined as a matter of "taste".* ***..... The system for electronic fashion shopping is based on an expert system analysis of the personal information and available garments, and also recommends what shapes best compliment the customer's body type, as well as other fashion recommendations and information by Andrea Rose fashion consulting services.RTM. and any other designers.*** *The system thus provides a personalized "chart" characterizing the customer's body type. This chart may be a physical printed document or electronic representation. The chart also has information on the best designs to flatter her specific shape and suggestions on how to dress and shop effectively. .....In essence, the computer system acts like a fashion consultant, addressing specific clothing problems, informing the customer her size in the manufacturer's clothes, and determining if there is a fit problem whereby the customer is informed of alterations needed on the garment.* ").

Rose discloses interacting and executing transaction related to selecting, try-on and purchasing fashion garments via a telecommunication network (see col.2, line 63-

col.3, line 17) but does not disclose that the transaction process includes making a try-on reservation for trying on said commodity at a store selling the commodity. The examiner notes that both the applicant's invention and Rose provide a computerized simulated fitting try-on session so that to make the selection of clothing/garments cost-effective to the sellers and convenient to the consumers by eliminating the need for the users to visit garment stores to select and try on the garments and for merchants to free the sales staff from being engaged in taking measurements of the consumers. Therefore, the option of providing a try-on reservation in store for the consumer appears to be redundant when the consumer can have a virtual feel and look of the fashion garment he is purchasing via simulation process disclosed in both Rose and the applicant's invention. Rose, therefore, does not explicitly teach making a try-on reservation for trying said commodity at a store selling the commodity. However, Liebermann explicitly discloses, as an admitted prior art, that consumers visit tailors for try-on sessions to ensure right fitting (see at least col.1, lines 29-43, " ..... *Traditionally, a tailor works with a muslin pattern based on the original measurements and, through at least one iteration, i.e., the fitting, adjusts the measurements to account for freedom of movement. Thus, the customer must visit the tailor for at least two sets of measurements, the original set and the fitting, before he or she can expect to receive the finished garment.* " .). In view of Liebermann, it would have been obvious to a person of an ordinary skill in the art to incorporate the well-known traditional feature of making try-on reservations in a store selling the commodity because that would ensure very fastidious customers, who may have some doubts about the fitting of garments with the virtual try-on process conducted via computerized simulation, to receive garments fit as per their liking. Some people might prefer one

more try-on even after making selection and ordering the garment via simulated electronic process as shown in Rose. For-example, at the start of electronic commerce many consumers would prefer to surf on-line in making selections but preferred to make purchase transactions by visiting the brick-mortar stores as they were not comfortable in using credit cards online. Therefore, the option of making try-on reservation in a store selling that commodity does not qualify to the standards of novelty and patentability.

Regarding claim 5, Rose in view of Liebermann discloses that a sales transaction support method according to claim 1, wherein said presentation of said commodity, said providing of said try-on simulation image, and said execution of the transaction process are performed via a telecommunication network (see at least col.3, lines 3-6, "....*The system is capable of being accessed remotely using telecommunication systems*.....").

Regarding claims 7, 11 and 12 their limitations are closely parallel to the manipulative steps of claims 1 and 5 and are therefore analyzed and rejected as being unpatentable over Rose in view of Liebermann based on same rationale.

Regarding claim 13, their limitations are closely parallel to the manipulative steps of claims 1 and 5 and is therefore analyzed and rejected as being unpatentable over Rose in view of Liebermann based on same rationale, except for the step of pre-selecting the commodity based on stored commodity presentation information indicative of recommended sales transaction in relation to a user. However, Rose does suggest

pre-selecting the commodity based on stored commodity presentation information indicative of recommended sales transaction in relation to a user (see at least col.4, lines 13-30, "……*The system for electronic fashion shopping is based on an expert system analysis of the personal information and available garments, and also recommends what shapes best compliment the customer's body type, as well as other fashion recommendations and information by Andrea Rose fashion consulting services.RTM. and any other designers. The system thus provides a personalized "chart" characterizing the customer's body type. This chart may be a physical printed document or electronic representation. The chart also has information on the best designs to flatter her specific shape and suggestions on how to dress and shop effectively. In essence, the computer system acts like a fashion consultant, addressing specific clothing problems, informing the customer her size in the manufacturer's clothes, and determining if there is a fit problem whereby the customer is informed of alterations needed on the garment.* ").

3.2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US Patent 5,930,769) in view of Liebermann (US Patent 6,415,199) and further in view of Saigo.

Regarding claim 6, Rose in view of Liebermann teaches a sales transaction support method including making a try-on reservation at a store selling the commodity, executing these transactions via a telecommunication network as analyzed and discussed in claim 1 above. Rose does not discloses that try-on reservation step issues a try-on reservation card having thereon an identification number for identifying said try-on reservation, when said try-on reservation for trying on said commodity is made. However, Saigo in the field of same endeavor, that is executing sales transactions involving a virtual try-on simulation process for a commodity like

eyeglasses, teaches outputting a record of the sales transaction details (see at least FIG.26, "Record Output Confirmation" corresponds to the claimed card having an identification number in the form of "customer Information number" and all other relevant details and also see at least col.22, lines 15-38). In view of Saigo, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Rose in view of Liebermann as applied to claim 1 to incorporate the feature of outputting the record related to the sale transaction including a customer information number, which corresponds to an identification number of the sales transaction. Doing so would help the consumer to use this copy of record as a receipt of the purchase order and present to the store to enable them retrieve the consumer's details and hand over the ordered garment for try-on.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(i) US Patents 6, 624,843 to Lennon (see at least col.1, line 1-col.2, line 51), 6,546,309 to Gazzuolo (see at least col.1, line 1-col.3, line 20) and 6,307,568 to Rom (see at least col.1, line 1-col.7, line 4) disclose methods and system to conduct sales transactions by providing users virtual try-on, via computerized simulation process, of commodities to be purchased.

(ii) US Patent 6,353,770 to Ramsey et al. discloses a system and a method for creating custom-fitted garments wherein the customer provides critical information such

as, measurements for waist, hips, height, weight, etc. (see at least col.3, line 15-col.8, line 55).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
November 19, 2004